

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

UNITED STATES for the use and benefit)	
of DEFENDER SERVICES INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:06-CV-95
)	<i>Collier / Lee</i>
PANTHER CONSTRUCTION CO, INC.,)	
KTL CONTRACTORS CORPORATION)	
f/k/a KREATIVE TOUCHE LANDSCAPE)	
& RELIABLE LAWN SERVICE, INC., and)	
MATHIS COMPANIES, INC.,)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiff's motion to compel Defendant KTL Contractors Corporation f/k/a Kreative Touche Landscape & Reliable Lawn Service, Inc. ("KTL") pursuant to Fed. R. Civ. P. 37 [Doc. No. 34]. As part of its motion to compel, Plaintiff seeks an order compelling Reuben Mitchell, allegedly the sole officer and owner of KTL, to comply with a deposition subpoena issued pursuant to Fed. R. Civ. P. 45 [*id.*].

A hearing on the motion was held on January 26, 2007. On January 29, 2007, the Court issued an order granting that aspect of Plaintiff's motion to compel and compelling Mr. Mitchell to appear for a deposition on February 19, 2007. On February 23, 2007, counsel for Plaintiff contacted the chambers of the undersigned and indicated that due to problems locating Mr. Mitchell, Plaintiff's counsel was unable to serve a copy of this Court's January 29, 2007, Order on Mr. Mitchell prior to the date of the scheduled deposition, February 19, 2007. Plaintiff's counsel indicated he will serve a copy of the Order on Mr. Mitchell on February 24, 2007.

Rule 45 governs the procedure regarding subpoenas that issue from this Court, and such subpoenas may command a person to appear for a deposition. Rule 45 provides certain protections for persons subject to a subpoena, and it explains a person's duties in responding to a subpoena. Fed. R. Civ. P. 45(c), (d). Persons subject to a properly issued subpoena are expected to comply with the terms of the subpoena, unless the Court quashes or modifies the subpoena in response to a timely filed motion. Fed. R. Civ. P. 45(c)(3)(A). Under Rule 45(e), a person's failure, without adequate excuse, to obey a subpoena served upon that person may be deemed a contempt of the Court.

Accordingly, that aspect of Plaintiff's motion which seeks an order requiring Mr. Mitchell to appear for deposition [Doc. No. 34] is **GRANTED** as follows: the Court hereby **COMPELS** Mr. Mitchell to appear for a deposition on **March 2, 2007 at 9:00 a.m.** in the offices of Husch & Eppenberger, LLC at 736 Georgia Avenue, Suite 300, Chattanooga, TN 37402. Further, pursuant to Fed. R. Civ. P. 4.1(a), the Court specially appoints Attorney Mitchem to serve this order upon Mr. Mitchell and make proof of service as provided in Rule 4(l).

Any failure by Mr. Mitchell to fully comply with this Order could result in a finding of contempt upon appropriate motion by Plaintiff.

SO ORDERED.

ENTER:

s/ Susan K. Lee

SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE